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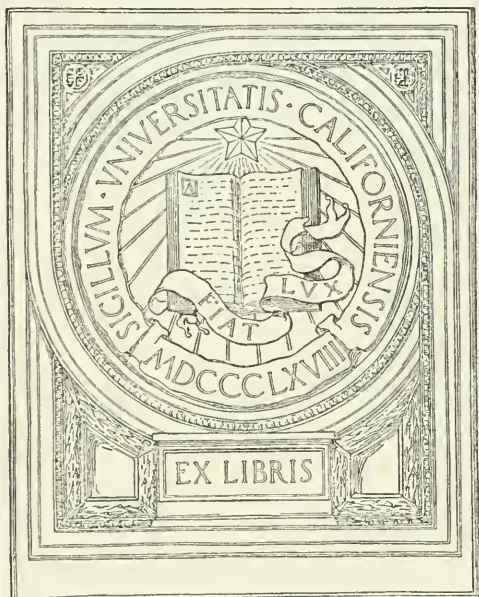
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STATEMENT OF THE ORIGIN OF THE
LITIGATION

CITIZENS' ASSOCIATION

OF

CHICAGO

1898

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STATEMENT.

At the instance of the Citizens' Association two petitions were filed at the June term, 1897, of the Supreme Court of Illinois, praying mandamus against Joseph Kipley, Superintendent of Police of Chicago, and Adolph Kraus, Dudley Winston and Hempstead Washburne, Civil Service Commissioners of that city, in the one case, and against the said Civil Service Commissioners alone, in the other.

These suits were the culmination of the struggle for the enforcement of the new Civil Service Act in the City of Chicago, which had been going on since the inauguration of Mayor Harrison in April, 1897.

Among the first official acts of Mr. Harrison was to create a vacancy in the commission by promoting Mr. Waller, the sole Democratic member, to the office of City Comptroller, and to remove on wholly unfounded charges of incompetency and neglect of duty, the other members, Messrs. Clark and Hotz. A new Commission was appointed consisting of Messrs. Kraus, Winston and Washburne.

On April 19th, within three days after the inauguration of the Mayor, Mr. Thornton, the new Corporation Counsel, the personal appointee of the Mayor, reversed the ruling of his predecessor, and announced in a written opinion, requested of him by the Mayor, that the following named positions were

not within the operation of the Civil Service Act: The Secretaries to the Commissioner of Public Works, to the Superintendent of Police, of the Department of Police, to the Commissioner of Buildings, of the Fire Department and of the Commissioner of Health : the Superintendent of Streets, of Water, of Sewage, of Special assessments, of Maps, of Milk and Food Division, of City Telegraph, and of Isolation Hospital ; the Assistant Superintendent of Police and of the Milk and Food Division; City Engineer; Assistant Commissioner of Health; Deputy Commissioner of Buildings; First Assistant Fire Marshal; Fire Inspector; Veterinary Surgeon; Chief of Division of Sanitary Inspection; Chief of Bureau of Smoke Inspection; Register of Vital Statistics; Chief of Division of Contagious Diseases; the four Inspectors and the fifteen Captains of Police.

The theory upon which this opinion was constructed was that the positions named were "heads of principal departments" of the city, as that phrase was used in Section 11 of the Civil Service Act, and were thus exempted from classification.

The Corporation Counsel publicly opposed the Merit System, and openly announced his opinion that the Civil Service Act was unconstitutional and void. The new Civil Service Commissioners took a more conservative stand, but it was generally believed they would endeavor to meet the views of the Mayor and extend the unclassified list. One of them, Mr. Winston, on April 23, was reported as having announced his concurrence in the opinion of the Corporation Counsel.

A large majority of the City Council was clamorously against the Merit system, and it was apparent that that body

would do all in its power, as subsequent events proved, to destroy the law.

Under these circumstances, the Citizens' Association sought the advice of counsel for a construction of the law and determined to appeal, if possible or advisable, to the courts.

There had been some suggestions, emanating from the Mayor and the Civil Service Commissioners, relative to a test case to secure judicial interpretation of the meaning of the phrase "heads of any principal department," and having this fact in mind the senior counsel of the Association called on Mr. Kraus, President of the Civil Service Commission, and offered, without cost to the City or the Commissioners, to aid in bringing the matter before the Courts. The offer was peremptorily rejected.

The situation was grave; the difficulties in the way of a suit were serious; nice discrimination and sound judgment were demanded for the occasion. After mature deliberation it was determined to seek Mr. Edward C. Akin, the Attorney General, and request that he lend his name for the bringing of original suits in mandamus in the Supreme Court. Too much credit cannot be given that officer for his course at this juncture. After a full explanation, he heartily concurred with Counsel for the Citizens' Association; and to his timely countenance and co-operation the ultimate success was largely due.

On the same day that the notice of the intention to apply for writs of mandamus was served on the Civil Service Commissioners and the Superintendent of Police, the Commissioners delivered an opinion exempting precisely the same positions from the operation of the Civil Service Act as were sought to be exempted by the Corporation Counsel, save only

the Captains of Police. Thus were the fears of the Citizens' Association justified.

Of the two petitions filed in the Supreme Court the first was directed against Chief of Police Kipley and the Civil Service Commission, and charged that the former was assuming to create vacancies in the positions of Assistant Chief, Inspectors and Captains and fill the same with appointees of his own choosing, in violation of the Civil Service Act. The petitioner prayed that the Chief be compelled to certify vacancies in those positions to the Civil Service Commissioners, and that the Commissioners be required to submit the names of eligibles to fill such vacancies.

To this petition Chief Kipley, through Corporation Counsel Thornton, made answer that the whole law was unconstitutional; but if constitutional insisted that under its terms the Chief had the right to create vacancies in the positions named and fill the same, because such positions were within the meaning of Section 11 of the act exempting "heads of any principal department" from its operation. The Commissioners adopted all of the answer of the Corporation Counsel except as to the alleged unconstitutionality of the law, and set up numerous technical objections to the form of the petition.

The second petition alleged that the Commissioners had promulgated an opinion (identical with Thornton's save as to police captains), in which they held numerous positions (naming them) exempt from the operation of the act, and prayed that they be compelled to classify the same and bring them within its terms.

The Commissioners made answer attacking, with technical objections, the form of the petition as in the Kipley case, and

also alleged that the positions named were not within the meaning of the Act and not required by its terms to be classified. The answers of the Commissioners were signed by T. A. Moran, John W. Ela and Levy Mayer, attorneys for the defendants.

Afterwards, in the Kipley case, a plea *puis darrein continuance* was filed setting up as a further defense the so-called Powers' ordinance. This was an ordinance introduced by Alderman Powers, passed by the Council, and approved June 28, by the Mayor. It attempted to exempt, by designating them heads of principal departments, all the positions named in the opinions of the Commissioners and of the Corporation Counsel, and sundry other subordinate positions. This plea raised the whole question of the power of the City Council to nullify, by ordinance, the provisions of the Civil Service Act.

Demurrers were filed by the petitioner to all the answers and to the plea and the cases went over to the October Term of the Supreme Court.

When they were reached in October, Mr. John W. Ela and Mr. Levy Mayer appeared for the Commissioners and the Corporation Counsel for Chief Kipley. In the argument, Mr. Thornton insisted that the Merit System was a failure, government under it impossible, and that the whole law was unconstitutional; or, if the Court should not hold that view, then that the Powers ordinance was operative, and the positions therein named were thereby taken out of the classified service.

Mr. Mayer confined himself principally to an attack upon the form of the proceeding and urged the Court to throw the cases out for alleged informalities. Mr. Ela joined with him

in this argument and besides insisted upon the construction of the meaning of "heads of any principal department" as set forth in the Commissioners' opinion of May 22, and in the opinion of Mr. Thornton of April 19, except as to police captains. He also had something to say as to the illegality of the Powers' ordinance. Both gentlemen argued for the constitutionality of the Act.

The Citizens' Association was represented by Messrs. Smith, Blair & Smith, Mr. E. B. Smith and Mr. Murry Nelson, Jr.

The essential points in the case were: First, the sufficiency, in matter of form, of the petitioner's pleadings; second, the validity of the exemptions claimed by the opinions of the Commissioners and Mr. Thornton; and third, the legality of the Powers' ordinance.

On the first two, Messrs. Ela and Mayer strenuously opposed the Attorney-General and the attorneys of the Citizens' Association.

On the 22d day of December the opinions of the Supreme Court were handed down.

They were written by Mr. Justice Magruder and are sweeping in character.

The evils of the spoils system are enumerated; the famous aphorism of Marcy that "to the victor belongs the spoils" is called a "semi-barbarous maxim"; and it is declared that the Legislature of Illinois passed our Civil Service Act in order to "do away with the onerous burden of the curse" of the spoils system.

Passing to the objections of the Corporation Counsel to

the constitutionality of the Act, the learned judge answers them fully.

The general scheme of the Act is set out, and it is held, citing the opinion of Justices, 138 Mass., 601; *Rogers v. Common Council of Buffalo*, 123 N. Y., 173, and *Chittenden v. Wurster*, 152 N. Y., 345, that it is entirely within the power of the Legislature to provide for the filling of public offices and positions according to merit and fitness, to be ascertained by competitive examination; to provide for the removal of such appointees, and to provide penalties for the violation of the provisions of an Act drawn upon these lines.

The point made that the Act is unconstitutional because it delegates to Civil Service Commissioners the exercise of judicial functions, is also investigated and denied. The case of *Interstate Commerce Commission v. Brimson*, 154 U. S., 447, is cited by the Court as being in point, and is followed on this branch of the case.

It was contended also, by counsel for Kipley, that Section 12 of the Act, which provides for a trial of charges against appointees by the Commission, removal to follow a conviction, is a violation of the constitutional right of trial by jury, on the theory that a public office with its emoluments is the property of the office holder, and that no man can be deprived of his property without a jury trial. The Court recognizes this as the usual claim of a spoilsman, and disposes of it in vigorous and trenchant language.

To the objection that the Act is unconstitutional, as being special legislation, the Court say the contention is without force.

To the objection that the Act is unconstitutional, because

in Section 35 it is provided that if any person shall be convicted under the next preceding section, his office shall, by force of such previous conviction, be rendered vacant, and such person shall be incapable of holding office for a period of five years, the Court, on technical grounds, is inclined to sustain counsel for Kipley, but takes all force from the holding by saying that that portion of the Act may be void and all the rest remain in full force and effect.

Having thus, with painstaking effort, disposed of all the so-called constitutional objections, the Court then passes to a discussion of what is meant by "heads of any principal department," as contained in Section 11, the exempting section of the Act. A careful argument is made on this branch of the case in the opinion, and the deduction drawn that the phrase means the head or heads of the six principal departments in the City of Chicago as they existed by virtue of the City and Villages Act and the ordinances in force at the time of the adoption of the Civil Service Act by the City of Chicago. As those ordinances existed at that time there was but one head to each of the several departments, and the Court holds that "heads of any principal department" means the single heads of each department, and its meaning is not to be extended by construction.

On this point Mr. Justice Phillips and Mr. Justice Boggs dissent.

The ordinance of June 28th, 1897, known as the Powers' ordinance above spoken of, and which was intended, so far as the Council had power to do so, to emasculate the Civil Service Act, is handled without gloves. It is said to be "in the teeth of the Act." It is said that ordinances "must be reason-

able in order to be valid, and that they must spring from an honest exercise of legislative discretion." To permit the City Council to pass such an ordinance would be to place the Civil Service Act at the mercy of the spoilsman. The ordinance is held invalid.

Finally the Court disposes briefly of the technical objections, made by Counsel for the Commissioners, to the sufficiency of the petitions; and it is held that they set forth a clear right on the part of the relator to have the act performed, and a plain duty on the part of the respondents to act in the premises.

Accordingly it is ordered that the writ of mandamus issue to the respondents, to the Superintendent of Police to give the notice, and to the Commissioners to make the certification, as prayed in the petition.

In the case against the Commissioners, the opinion is brief, referring to the Kipley case as containing the views of the Court; overruling the technical objections to the form of the pleadings, and ordering the writ to issue.

Thus was fought one of the most important battles of the new crusade. Never was victory more complete, and in spite of vilification from spoilsmen, condemnation by pseudo friends of reform and half-hearted support of timid souls, these are the results:

1. The law has been sustained. The Civil Service merit system has its place in the fundamental law.

2. The law is to be read and interpreted according to its plain intent and meaning, and not in momentary impulses based upon short-sightedness or specious argument of spoils-

men, improperly denominated "policy." The Mayor cannot molest, and the Council cannot make afraid.

3. When now a candidate announces himself in favor of Civil Service the public will be able to hold him, measurably, at least, to his promises.

THE FUTURE.

It will be well for city disbursing officers to study the prohibitory features of the law.

It is evident that the popular pulse beats for the law, and that for either party it would be good policy, if only from a party view, to support it heartily, sincerely and with vigor.

It is believed that if the law shall be enforced many obstacles will disappear. They have been fostered by enemies of the law and exist in the minds of timid friends only.

Insincere and insufficient administration will surely be found out and the responsible party or persons made to suffer.

It is proper to state that counsel both for Kipley and the Civil Service Commission, although the latter, according to newspaper accounts, have professed to be satisfied with and even claimed to have been the main instruments in bringing about the results, have filed with the Clerk of the Supreme Court notices of intention to apply for a rehearing.

The petitions will be considered at the February term, but there should seem to be no doubt but that rehearings will be denied.

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